

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MICHAEL WARRINGTON, on his)
behalf and others so situate,)
)
Plaintiff,)
)
v.) Civ. No. 04-1288-SLR
)
ALLEN FAMILY FOODS,)
)
Defendant.)

MEMORANDUM ORDER

At Wilmington this 30th day of November, 2004, having reviewed plaintiff's motion for remand (D.I. 6) and the papers submitted in connection therewith (D.I. 10, 11);

IT IS ORDERED that said motion is denied for the reasons that follow:

1. **Background.** On September 9, 2004, plaintiff filed a class action complaint in Delaware Superior Court alleging that defendant violated 19 Del. C. § 1107 by deducting union dues in excess of the amount authorized by plaintiff. (D.I. 1) On September 21, 2004, defendant filed a notice of removal pursuant to 28 U.S.C. §§ 1441 and 1446, contending that this court has original jurisdiction over the matter pursuant to the Labor Management Relations Act, 29 U.S.C. § 301(a). (Id.) Plaintiff moved to remand on October 13, 2004. (D.I. 6) Defendant filed a third party complaint against Local Union No. 355 on October 22,

2004. (D.I. 10) Defendant filed its opposition to the motion to remand on October 27, 2004. (D.I. 11)

2. **Standard of Review.** An action filed in state court can be removed by a defendant to a federal district court if that federal court would have had original jurisdiction over the action. 28 U.S.C. § 1441(a) The burden is on the removing party to demonstrate that federal subject matter jurisdiction exists and removal is proper. Boyer v. Snap-On Tools Corp., 913 F.2d 108, 111 (3d Cir. 1990).

A motion to remand based on lack of subject matter jurisdiction may be made at any time before final judgment is entered. 28 U.S.C. § 1447(c) Removal statutes are to be "strictly construed against removal and all doubts resolved in favor of remand." Steel Valley Auth. v. Union Switch & Signal Div., 809 F.2d 1006, 1010 (3d Cir. 1987).

3. **Discussion.** Plaintiff asserts that this court lacks original jurisdiction as the matter seeks redress under applicable state statute, 19 Del. C. § 1107, and is not preempted by the Labor Management Relations Act ("the Act"), 29 U.S.C. § 141. (D.I. 6) The Act provides:

It is the purpose and policy of this chapter, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations

with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

29 U.S.C. § 141(b). Plaintiff contends that the cause of action implicates state law, specifically 19 Del. C. § 1107,¹ which provides, in relevant part:

No employer may withhold or divert any portion of an employee's wages unless: (1) the employer is required or empowered to do so by state or federal law; or (2) the deductions are for medical, surgical or hospital care or service, without financial benefit to the employer, and are openly, clearly and in due course recorded in the employers' books; or (3) the employer has signed authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee . . .

Defendant argues that the Act clearly preempts state law claims where resolution of the state law claim is substantially dependent upon an analysis of the terms of an agreement made between the parties in a labor contract. See Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985). Defendant avers that there was a Collective Bargaining Agreement ("CBA") in place that governs the terms and conditions of plaintiff's employment. (D.I. 10, Ex. 2) Since plaintiff's claims require an interpretation of terms in the CBA, defendant contends preemption applies.

¹The accompanying penalty statute, 19 Del. C. § 1112, provides for civil causes of action.

4. **Conclusion.** Paragraph two of the CBA explicitly provides for deduction of wages from an employee's paycheck for labor union dues. (D.I. 10, Ex. 2) Because plaintiff's complaint challenges the number and date of those CBA deductions, his claims are preempted and remand to state court is inappropriate. See generally Antol v. Esposito, 100 F.3d 1111, 1115-1116 (3d Cir. 1997); Lingle v. Norge Div. Of Magic Chef Inc., 486 U.S. 399, 410-411 (1988).

Sue L. Robinson
United States District Judge